ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION I

CACR06-689

March 7, 2007

J.T. TALBERT, JR. APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FOURTH DIVISION [NO. CR 99-4173]
V.	HON. JOHN W. LANGSTON, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

The appellant pled guilty to forgery and theft of property and was placed on probation. The State filed a petition to revoke in February 2005 based on allegations that appellant committed two counts of third-degree sexual assault. Appellant's probationary period expired in May 2005. In August 2005, appellant was convicted in a separate proceeding of committing the two counts of sexual assault alleged in the revocation petition. In September 2005, the State amended the original petition to revoke to include an allegation that he violated the conditions of his probation by testing positive for cocaine. After a hearing on February 10, 2006, appellant's probation was revoked on the grounds that he committed felony sexual assault while on probation. Appellant argues that his revocation should be reversed on appeal because he was not brought to a hearing within sixty days of his arrest as

required by Ark. Code Ann. § 5-4-310(b)(2) (Repl. 2006); because the petition to revoke was not filed until after his probationary period expired; and because the felony statutes he was found to have violated so as to justify revoking his probation were unconstitutional. We affirm.

First, it is true that Ark. Code Ann. § 5-4-310(b)(2) (Repl. 2006) requires that the revocation hearing occur within sixty days of the defendant's arrest. However, the statutory period set out in this subsection is not jurisdictional, but instead merely establishes a period beyond which the revocation hearing cannot be delayed if the defendant objects. *Haskins v. State*, 264 Ark. 454, 572 S.W.2d 411 (1978). Here, appellant not only failed to object, he expressly waived the sixty-day requirement according to a docket entry of February 18, 2005, and subsequently moved on several occasions to reset the revocation hearing to a later date. The sixty-day requirement set out in § 5-4-310(b)(2) can be waived, *see Summers v. State,* 292 Ark. 237, 729 S.W.2d 147 (1987), and appellant expressly did so in the present case.

Second, we find no merit in appellant's argument that the trial court lacked jurisdiction because the petition to revoke was not filed until after the probationary period expired. As reflected by docket entry, the September petition to revoke was not a new petition but instead was simply an amendment to the original, timely petition that merely added an additional alleged violation, *i.e.*, that appellant tested positive for cocaine. Because the record shows and appellant concedes that his revocation was based wholly on a finding that he committed the felonies alleged in the original petition to revoke, and not on the

positive cocaine test alleged in the amendment, appellant can show no prejudice arising from the amended petition and, in the absence of prejudice, his argument fails. *See Green v. State*, 29 Ark. App. 69, 777 S.W.2d 225 (1989).

Third, appellant argues that the revocation was erroneous because the felonies on which that revocation was based are unconstitutional. However, his constitutional arguments were rejected by the Arkansas Supreme Court in his appeal from his convictions in *Talbert v. State*, 367 Ark. 262, ___ S.W.3d ___ (2006). We are bound by that decision. *See Gibson v. State*, 89 Ark. 184, 201 S.W.3d 422 (2005).

Affirmed.

HART and BIRD, JJ., agree.